

The Equal Employment Opportunity Commission is important to our nation's workers.

Established by the Civil Rights Act of 1964, the EEOC is charged with protecting employees from discrimination at work through enforcement of equal employment opportunity laws.

There are currently three Senate-confirmed vacancies at the EEOC – two Commissioner seats and the General Counsel.

This committee held a hearing on Janet Dhillon and Daniel Gade to serve as Commissioners on September 19, 2017 and approved their nominations on October 18, 2017.

They have been waiting nearly six months to be confirmed by the Senate.

Today, we are holding a hearing on the General Counsel nominee, who would have another important role at the EEOC.

If confirmed, Ms. Gustafson will be in charge of ensuring compliance with well-established anti-discrimination statutes, including Title VII of the Civil Rights Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act.

When a worker believes they have been discriminated against, they may file a charge of discrimination with the EEOC.

EEOC will evaluate the case and make a determination about whether it believes unlawful discrimination has taken place.

If the charge is not resolved, the Commission may file a lawsuit in federal court, as it did 184 times last fiscal year. Through a delegation of power from the Commission to the General Counsel, Ms. Gustafson will have broad authority to bring these cases to court.

If the EEOC decides not to litigate, the worker can still sue in federal court.

Many charges are brought each year and the Commission has struggled for a long time with a backlog of cases.

At the end of fiscal year 2016, the EEOC had more than 73,000 outstanding charges of discrimination.

The commission has made some progress—the EEOC received an additional 84,000 charges during the last fiscal year and reduced the backlog to 61,000 total charges pending.

Unfortunately, the last General Counsel, appointed by President Obama, made poor decisions in pursuing cases and suffered embarrassing losses in the courts as a result.

In one case, EEOC alleged that a company's use of credit background checks led to race discrimination. A three judge panel on the 6th Circuit Court of Appeals stated:

“EEOC brought [its] case on the basis of a homemade methodology, crafted by a witness with no particular expertise to craft it, administered by persons with no particular expertise to administer it, tested by no one, and accepted only by the witness himself.”

The EEOC continued to use the same faulty witness testimony in another case and, eventually lost that case, too.

In that case, a unanimous three-judge panel on the 4th Circuit Court of Appeals found that there were “an alarming number of errors and analytical fallacies in [the expert witness’s] reports, making it impossible to rely on any of his conclusions.”

I hope Ms. Gustafson will do a better job overseeing the EEOC’s litigation and we don’t see these types of rebukes under her leadership. Her impressive qualifications lead me to believe she will do a better job.

After graduating with honors from Georgetown University Law Center, she spent five years practicing labor and employment law at Jones Day.

Since 1995, Ms. Gustafson has represented both employees and employers, and she has practiced before the EEOC and the federal courts, including winning legal protections for pregnant workers nationwide at the U.S. Supreme Court in *Young v. UPS*.

In 2016, the Metropolitan Washington Employment Lawyers Association awarded her with its Lawyer of the Year award, “in recognition of outstanding dedication to Civil Rights, Equality, and Justice.”

Ms. Gustafson was nominated on March 20, 2018. On March 29, 2018, the committee received her Office of Government Ethics (OGE) paperwork, including her public financial disclosure and ethics agreement. Based on these documents, the OGE determined that Ms. Gustafson “is in compliance with applicable laws and regulations governing conflicts of interest.” The Committee also received Ms. Gustafson’s HELP application on March 29, 2018.

I hope once this committee approves Ms. Gustafson’s nomination, the full Senate will quickly vote on her nomination, as well as the two Commissioners’ nominations who are awaiting consideration on the Senate floor, so they can begin their duties protecting workers.

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